

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 712 (Portantino)
Version: February 16, 2023
Hearing Date: March 28, 2023
Fiscal: No
Urgency: No
TSG

SUBJECT

Tenancy: micromobility devices

DIGEST

This bill prevents landlords from prohibiting their tenants from: (1) owning personal micromobility devices such as wheelchairs, bicycles, scooters, skateboards, hoverboards, and their electric equivalents; or (2) storing such devices in their dwelling units, unless the landlord provides an alternative, secure, and long-term alternative storage location.

EXECUTIVE SUMMARY

Personal micromobility devices – things like bicycles, scooters, hoverboards, wheelchairs, skateboards, and their electric equivalents – are not just fun, efficient, or necessary ways to get around. Increasingly, they have been recognized as key component of a good public transit system, carrying riders the critical “first and last” miles from the unique beginning and end of their journey to the shared modes of transportation in between. Where landlords prohibit their tenants from owning or storing personal micromobility devices at home, however, those tenants are effectively cut off from the use of those devices. That undermines the potential personal and social benefits that the devices offer. With that problem in mind, this bill would generally prevent landlords from prohibiting their tenants from owning personal micromobility devices or storing such devices in their dwelling unit. However, a landlord would still be able to ban storage of personal micromobility devices in the rental dwelling unit they own as long as the landlord provides an alternative secure and long-term storage location.

The bill is sponsored by Streets for All. Support comes from advocates of active transportation. There is no opposition on file. If the bill passes out of this Committee, it will next be heard on the Senate Floor.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires a landlord to approve a tenant's written request to install an EV charging station at a parking space allotted for the lessee, so long as the request meets specified conditions and complies with the landlord's approval process for modification to the property. (Civ. Code § 1947.6.)
- 2) Prohibits a landlord from requiring a tenant to declaw or devocalize a pet cat as a condition of occupancy. (Civ. Code § 1942.7.)
- 3) Prevents a landlord from prohibiting the installation of a clothesline or drying rack, subject to specified conditions. (Civ. Code § 1940.20.)
- 4) Prevents a landlord from prohibiting tenants from engaging in personal agriculture on the rental premises, subject to specified conditions. (Civ. Code § 1940.10.)
- 5) Prevents a landlord from prohibiting tenants from displaying political signs, subject to specified conditions and limitations. (Civ. Code § 1940.4.)
- 6) Prevents a landlord from prohibiting tenants from affixing or displaying religious items on a doorway or door frame, subject to specified conditions. (Civ. Code § 1940.45.)

This bill:

- 1) Defines micromobility devices to include, but not to be limited to, wheelchairs, bicycles, e-bicycles, scooters, e-scooters, skateboards, and hoverboards.
- 2) Prevents landlords from prohibiting their tenants from owning personal micromobility devices.
- 3) Prevents landlords from prohibiting their tenants from storing a personal micromobility device in their dwelling unit unless the landlord provides secure, long-term storage for those devices.

COMMENTS

1. Personal micromobility devices as key components of successful public transportation networks

Apart from the critical role that they can play in helping some people with disabilities to get around, personal micromobility devices – things like bicycles, scooters, hoverboards, skateboards, and their electric equivalents – were long associated with

leisure activity. More recently, these devices have been recognized as potentially key components of a good public transit system.

Personal micromobility devices provide public transportation users with what is sometimes referred to as the “first and last miles.” The first mile is the trip between the rider’s unique starting point and the public transportation nodes where they join other riders such as bus stops, rail terminals, and subway stations. The last mile is the back end journey between the shared public transportation node and the rider’s unique final destination. For some riders, the availability of personal micromobility devices to cover the first and last mile makes a crucial difference in the accessibility and attractiveness of utilizing public transport.

As a 2021 U.S. Department of Transportation publication put it:

Shared micromobility devices such as bicycles, electric bicycles (e-bicycles), and e-scooters may create a more diverse, convenient, and accessible transportation network, which can provide more transportation options, reduce congestion, and improve quality of life.¹

2. The problem the bill is intended to address

In response to a recent series of fires in New York City attributed to people charging lithium ion batteries for electronic bicycles, the fire department there has instituted new rules requiring landlords to post safety signage about the devices.² Some New York landlords have apparently gone even further, simply banning their tenants from keeping such bicycles in their units at all.³ Tenants in these situations are effectively cut off from using such devices. Absent an alternative place to keep the devices securely nearby, having and using a personal micromobility device becomes effectively impossible.

3. The proposed solution

To address this dynamic, this bill would prevent landlords from prohibiting tenants from owning personal micromobility devices. Just as importantly, the bill would

¹ Price *et al.* *Micromobility: A Travel Mode Innovation* (Spring 2021) U.S. Department of Transportation, Federal Highway Administration <https://highways.dot.gov/public-roads/spring-2021/02> (as of Mar. 4, 2023).

² Adcroft. *FDNY to Require Landlords to Post E-Bike Safety Signage After Series of Fires* (Nov. 28, 2022) Spectrum News NY1 <https://www.ny1.com/nyc/all-boroughs/news/2022/11/28/fdny-to-require-landlords-to-post-e-bike-safety-signage-after-series-of-fires> (as of Mar. 22, 2023).

³ McNicholas. *Some Say Despite Rash of Fires, E-Bike Ban in NYC Buildings is Not the Right Approach* (Nov. 7, 2022) CBS New York <https://www.cbsnews.com/newyork/news/some-say-despite-rash-of-fires-e-bike-ban-in-nyc-buildings-is-not-the-right-approach/> (as of Mar. 22, 2023).

prevent landlords from banning the storage of personal micromobility devices inside dwelling units, thus ensuring that tenants would have a safe, accessible place to keep the devices, protected from the elements and from theft. Enabling all tenants to keep personal micromobility devices with them where they live also facilitates the charging of those personal micromobility devices that rely on an electric motor and battery power.

Anticipating that some landlords will be uncomfortable allowing tenants to store things like bicycles and scooters in their dwelling units – particularly in light of the possible additional fire risk the electric versions of these devices pose – the bill offers those landlords an alternative: those landlords can fully prohibit storage of personal micromobility devices inside the dwelling units, but then those landlords have to provide an alternative, secure storage location.

4. Wheelchairs (or any other micromobility device needed to accommodate for a tenant's disability) are already covered by existing law

The bill includes wheelchairs among the micromobility devices that a landlord would have to permit a tenant to own and store in the dwelling unit. It is important to note that existing civil rights law already requires landlords to allow a tenant to own, use, and store a wheelchair in the tenants' dwelling units whenever the tenant needs the wheelchair on account of a disability. (42 U.S.C. §§ 3601-3631; Civ. Code §§ 54.1, 54.2; and Gov. Code §§ 12955-12956.2.)

It is not the author's intent to supersede that existing law with regard to storage of wheelchairs. However, the bill in print contains a provision allowing landlords to prohibit storage of micromobility devices within dwelling units as long as the landlord provides an alternative, secure, and long-term location for such storage. As a result of this provision, the bill in print could potentially be construed to allow landlords to insist that disabled tenants store their wheelchairs in such an alternative location. To avoid such an interpretation, the author proposes to offer an amendment in Committee clarifying that the provision allowing a landlord to insist that tenants store their micromobility devices in an alternative location away from the dwelling unit does not apply to circumstances in which a tenant requires access to and use of a wheelchair as an accommodation for a disability.

5. Tightening the definition of micromobility devices

There are many types of micromobility devices currently. New varieties appear constantly. Perhaps with that in mind, the bill in print avoids limiting the definition of micromobility devices to specific, known devices. Instead, the bill provides a few examples, but otherwise leaves the definition of personal micromobility device open ended. The policy drawback to this approach is that such a broad definition invites

future disputes (and, at the extremes, litigation) over what exactly constitutes a micromobility device covered by this law.

To retain the virtues of a relatively open definition while eliminating a few of the most obvious potential disputes, the author proposes to offer two amendments in Committee that would clarify the meaning of personal micromobility devices in the following ways. First, the amendments specify that for the purposes of this bill, a personal micromobility device is one that is designed for use by a single individual or an adult together with up to three children. The idea behind the amendment is to exclude larger devices that can carry multiple people while still including things like a bicycle with child seats. Second, the amendments define a personal micromobility device as one powered by the rider's own physical exertion or an electric motor. The exclusion of devices powered by internal combustion engines comports with California's effort to reduce reliance on non-renewable energy sources and has the additional virtue of addressing the dangers associated with internal combustion engine exhaust indoors.

6. Detailing the requisite characteristics and costs of the alternative storage location

As previously mentioned, the bill in print gives landlords the option to prohibit tenants from storing personal micromobility devices inside the tenants' dwelling units so long as the landlord provides the tenants a "secure, long-term storage" alternative for their personal micromobility devices. Beyond this vague description, however, the bill in print does not offer landlords much information about what is required, nor does it give tenants much assurance that this alternative will be anything close to equivalent to storing their personal micromobility device in their home with them.

To provide more detail for landlords and tenants alike, the author proposes to offer amendments in Committee that would provide some minimum characteristics that the alternative storage site would have to have in order for the landlord to require its use in lieu of in-home storage. In brief, those amendments require the alternative storage site to be located within a short distance of the tenant's home, to exclude everyone other than residents of the same housing complex from access, and to be sufficiently sealed against precipitation to keep the personal micromobility devices dry. Finally, because many personal micromobility devices operate off of battery power and must be regularly recharged, the amendments require that the landlord provide an electrical outlet for each personal micromobility device that will be stored at the alternative site.

Of course, any landlord for whom these requirements would be overly onerous or costly would retain the option of allowing the tenants to store their personal micromobility devices in their own units. For this same reason, the amendments specify that if a landlord is going to require tenants to use the alternative storage site, then the landlord cannot charge the tenants for it.

7. Clarifying what a landlord may still prohibit with respect to micromobility devices

Although the bill is intended to ensure that landlords cannot deprive their tenants of the use of personal micromobility devices altogether, landlords would not lose all control over how tenants use and store the devices at the rental property. To make the elements of this retained control explicit, the author proposes to offer the following amendments in Committee.

First, storage of a micromobility device inside a dwelling unit can be expected to contribute to ordinary wear and tear. Such ordinary wear and tear cannot be charged to a tenant or deducted from the tenant's security deposit. (Civ. Code § 1950.5(b).) Performing repair or maintenance work on a micromobility device inside a dwelling unit raises the prospect of damage beyond ordinary wear and tear, however. With that in mind, the author proposes to offer an amendment in Committee that, while still preventing a landlord from prohibiting storage of the device, would make it clear that a landlord can prohibit tenants from repairing or performing maintenance on the micromobility device inside the dwelling unit.

Second, the author proposes an amendment making it clear that a landlord does not have to make modifications to the physical structure of the dwelling in order to enable the tenant to store a personal micromobility device there, nor does the landlord have to approve a tenant's request to modify the structure in order to store a personal micromobility device.

Finally, the amendments clarify that a landlord may compel a tenant to store a personal micromobility device in a way that is compliant with applicable fire codes.

8. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- narrow the definition of personal micromobility devices;
- insert minimum requirements for the secure, long-term storage alternative;
- establish a minimum number of personal micromobility devices that a landlord must permit;
- clarify that a landlord can still prohibit repair and maintenance work on a personal micromobility devices within a dwelling unit and can still require storage of the personal micromobility device to comply with fire codes; and
- clarify that a landlord does not have to modify, or approve a tenant's request to modify, the physical structure of the dwelling unit in order to facilitate storage of personal micromobility devices.

A mock-up of the amendments in context is attached to this analysis.

9. Arguments in support of the bill

According to the author:

As the popularity of electric bikes (e-bikes) continues to grow, it is becoming increasingly important to address the issue of landlords banning these vehicles from apartments and homes. E-bikes are a sustainable and efficient mode of transportation that can greatly benefit individuals and communities by reducing traffic congestion, air pollution, and carbon emissions. However, many landlords are prohibiting their tenants from keeping e-bikes in their units, which can hinder their ability to use this convenient and eco-friendly mode of transportation. [...] Legislation that prevents landlords from banning e-bikes in apartments and homes would help to ensure that individuals have the right to choose sustainable transportation options that best suit their needs. It would also help to promote the growth of the e-bike industry by increasing demand and accessibility.

As sponsor of the bill, Streets for All writes:

Private developers across the country (including most notably in New York City) have begun enacting measures to limit or outright ban their tenants from owning or storing micromobility devices such as e-bikes in their units. [...] This bill [...] would ensure that landlords do not prevent a tenant from purchasing or owning a micromobility device. The more renters have other options for transportation, the more we can get individuals out of cars and help meet our climate goals as a state.

SUPPORT

Streets for All (sponsor)
Active San Gabriel Valley
California Bicycle Coalition
Marin County Bicycle Coalition
MOVE Santa Barbara County
Northern California Association of Commuter Transportation
Norwalk Unides
San Diego County Bicycle Coalition

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 638 (Allen, Ch. 855, Stats. 2019) modified -- and in almost every circumstance significantly reduced -- the amount of insurance coverage that a landlord may demand from a tenant requesting to install an electric vehicle (EV) charging station on residential rental property.

AB 1796 (Muratsuchi, Ch. 163, Stats. 2018) eliminated prior existing law that excluded rent controlled properties from the general rule that residential landlords must approve tenant requests to install EV charging stations so long as the installation meets certain preconditions. AB 1796 thus gave tenants in rent controlled units the same conditional right to install EV charging stations as all other tenants.

Amended Mock-up for 2023-2024 SB-712 (Portantino (S))

Mock-up based on Version Number 99 - Introduced 2/16/23

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1940.41 is added to the Civil Code, to read:

1940.41. (a) For purposes of this section:

(1) "Personal micromobility device" means a device with the all of the following characteristics:

(A) It is powered by the physical exertion of the rider or an electric motor.

(B) It is designed to transport one individual or one adult accompanied by up to three minors.

(2) "Secure, long-term storage" means a location with all of the following characteristics:

(A) Access is limited to residents of the same housing complex.

(B) It is located on the premises.

(C) It is reasonably protected against precipitation.

(D) It has a minimum of one standard electrical connection for each personal micromobility device that will be stored in that location.

(E) Tenants are not charged for its use.

(b) A landlord shall not prohibit a tenant from either of the following:

(1) Owning personal micromobility devices.

(2)(A) -Storing up to one a personal micromobility device in their dwelling unit for each person occupying the unit.

(B) Subparagraph (A) does not apply if ~~unless~~ the landlord provides the tenant secure, long-term storage for ~~these~~ the tenant's personal micromobility devices.

(C) Subparagraph (B) does not apply to circumstances in which an occupant of the unit requires the use of a personal micromobility device as an accommodation for a disability.

~~(b) For purposes of this section, “micromobility devices” includes, but is not limited to, wheelchairs, bicycles, e-bicycles, scooters, e-scooters, skateboards, and hoverboards.~~

~~(c) This section does not require a landlord to modify or approve a tenant’s request to modify a rental dwelling unit for the purpose of storing a micromobility device inside of the dwelling unit.~~

~~(d) This section does not prohibit a landlord from any of the following:~~

~~(1) Prohibiting repair or maintenance of personal micromobility devices within a dwelling unit.~~

~~(2) Requiring a tenant to store a personal micromobility device in compliance with applicable fire code.~~

~~(e) This section does not limit the rights and remedies available to disabled persons under federal or state law.~~